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CHARLES ELMORE CRO

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In the Supreme Court of the United States

OCTOBER TERM, 1930.

No. 453

THE EAST OHIO GAS COMPANY,
Appellant,

vs.

THE TAX COMMISSION OF OHIO, *et al.*,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

STATEMENT AS TO JURISDICTION ON APPEAL.

THOMAS H. HOGSETT,
WILLIAM B. COCKLEY,
Counsel for Appellant.

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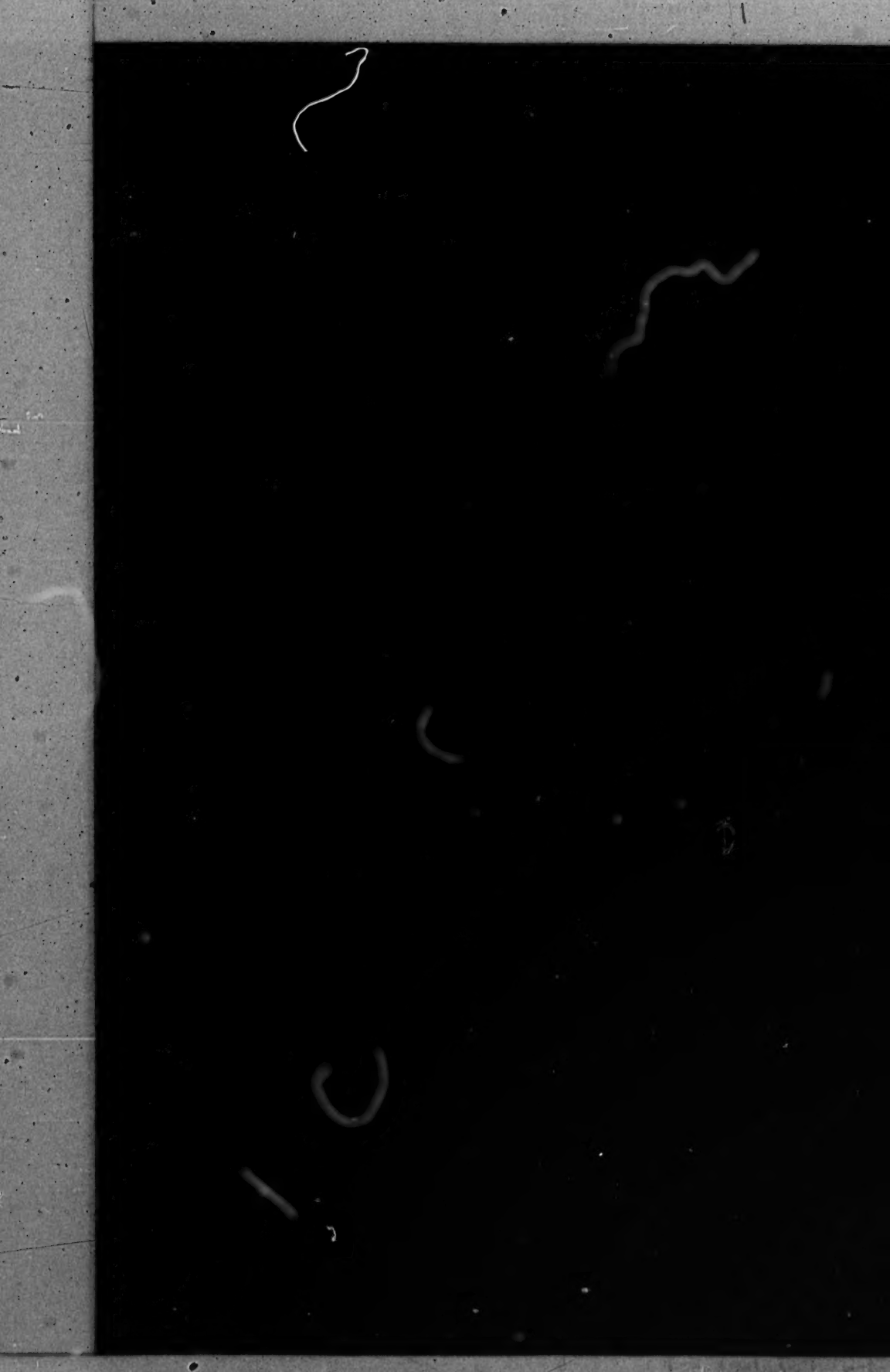

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May It Please the Court:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

A.

STATUTORY PROVISIONS SUSTAINING JURISDICTION.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stats. 936-938, provides that Section 238 of the Judicial Code (United States Code, Title 28, Section 345) is amended to read as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

(3) An Act restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State, approved March 4, 1913, which Act is hereby amended by adding at the end thereof, 'The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit'."

B.

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The Decree sought to be reviewed was entered on the 19th day of July, 1930 (R. 95).* The application for appeal was presented on the 18th day of August, 1930 (R. 95).*

C.

NATURE OF CASE AND RULING BELOW.

The East Ohio Gas Company distributes natural gas in more than fifty municipalities in Northern and Eastern Ohio, the principal cities being Cleveland, Akron, Canton, Massillon and Youngstown. Approximately three-fourths of its supply of natural gas during the years 1927, 1928 and 1929 was produced in West Virginia and Pennsylvania. The West Virginia gas was purchased from Hope Natural Gas Company and the Pennsylvania gas from The Peoples Natural Gas Company, and both the West Virginia gas and Pennsylvania gas were sold and delivered by said Com-

* All references to the Record are to the pages of the certified unprinted record prepared by the Clerk of the District Court of the United States for the Southern District of Ohio, Eastern Division, and on file with the Clerk of this Court. The Record has not yet been printed.

panies to The East Ohio Gas Company at the Ohio state boundary line and there received into the high pressure transmission pipe lines of The East Ohio Gas Company. Through these high pressure lines the gas was transported to said municipalities where it entered the local distribution systems of The East Ohio Gas Company.

In making out its annual report to the Ohio Tax Commission for the years 1927, 1928 and 1929, The East Ohio Gas Company reported the receipts from the sales of all gas purchased by it from the Hope Natural Gas Company and the Peoples Natural Gas Company as the receipts from interstate commerce, and all other receipts as the receipts from intrastate commerce (R. 47-48)* and paid the Ohio excise tax of 1.35% on the amount reported as gross receipts from its intrastate business (R. 48-49).*

On January 13, 1930, the Ohio Tax Commission, an administrative body (charged by law) with the duty imposed by the Statutes of Ohio (General Code Secs. 5475, 5476, 5481, 5483 and 5488) of determining the gross receipts of natural gas companies for the purpose of taxation (R. 6),* made an order finding the receipts of The East Ohio Gas Company from the sale of West Virginia and Pennsylvania gas to be "omitted gross receipts" subject to the Ohio excise tax and directed the Attorney General to collect a tax based on these receipts (R. 47-50).* Demand for payment of this tax amounting, with penalties, to more than $900,000.00 was made by the Attorney General on January 16, 1930 (R. 51).* Application by The East Ohio Gas Company to the Tax Commission for a rehearing was made and denied (R. 51).*

Thereupon, the appellant filed its Bill of Complaint in the District Court seeking to enjoin the Tax Commission and other officers of the State of Ohio from enforcing said order of the Tax Commission on the ground that the order imposed a direct burden on interstate commerce in the form

of an excise tax upon the gross receipts thereof contrary to the provisions of Article I, Section 8, of the Constitution of the United States. Application was made for an interlocutory decree and a three Judge Court convened to hear said application (R. 24-27).*

At the time the hearing was held the case was finally submitted to the Court upon an Agreed Statement of Facts (R. 39).* The District Court refused to grant the injunction and dismissed the Bill of Complaint (R. 87).*

D.

CASES BELIEVED TO SUSTAIN JURISDICTION.

Federal jurisdiction is believed to be sustained by the following cases:

Oklahoma Natural Gas v. Russell, 261 U. S. 290, 292;
Herkness v. Irion, 278 U. S. 92, 93;
Ex Parte Public Bank, 278 U. S. 101, 104.

Equity jurisdiction rests upon the claim that the excise tax imposed by order of the Tax Commission of Ohio is a cloud upon the title to real estate owned by The East Ohio Gas Company and that the penalties and remedies provided by the Statutes of Ohio for the enforcement of the payment of this tax are such that the appellant will be irreparably injured in its business and property rights unless equity intervenes. *Ohio Tax Cases*, 232 U. S. 576, 587.

It is respectfully submitted that this Court has jurisdiction of this appeal by virtue of Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925.

Respectfully submitted,

THOMAS H. HOGSETT,

WILLIAM B. COCKLEY,

Counsel for The East Ohio Gas Company, Appellant.